In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 16864 of 2006

Date of Decision: 18.01.2007

Ajay Kumar Singla

…Petitioner

Versus

Union of India and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE VINOD K. SHARMA

Present: Ms. Radhika Suri, Advocate,
for the petitioner.

Mr. G.S. Anand, Advocate,
for respondent No. 2.

JUDGMENT

M.M. KUMAR, J. (Oral)

This petition filed under Article 226 of the Constitution prays for quashing notices dated 28.8.2006 (Annexures P-1, P-2 and P-3 respectively). It is appropriate to mention that the aforementioned notices were issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It has further been prayed that direction be issued to respondent No. 2 to release from equitable mortgage S.C.F. No. 14, Grain Market, Ghanaur, which was

mortgaged on account of cash credit limit loan availed by the petitioner.

When the writ petition came up for motion hearing before a Division Bench of this Court, after noticing the contention raised on behalf of the petitioner, the Bench has passed the following order on 26.10.2006:-

> " Counsel for the petitioner states that so far as disbursement of loan to M/s Ghanaur Rice Mills is concerned, the petitioner never mortgaged the property, in dispute, i.e. S.C.F. No. 14, Grain Market, Ghanaur. She further states that regarding loan amount disbursed in favour of M/s Himalayan Fresh Proteins, the property, in dispute, was not put under lien of the Bank.
>
> Notice of motion for 3.11.2006.
>
> Dasti.
>
> It is made clear that if contention raised by counsel for the petitioner is found to be incorrect, the petitioner shall be burdened with heavy costs.
>
> Respondent No. 2 - Bank is directed to produce the mortgage deed of the property, in question, with regard to all three loan accounts."

In the written statement filed by respondent No. 2 it has been categorically asserted that S.C.F. No. 14, Grain Market, Ghanaur, has been mortgaged with the bank as equitable mortgage and the title deed was deposited by the petitioner at the time of availing cash credit limit loan. Initially it was availed in the name of M/s Singla Trading Company and thereafter it was continued and the equitable mortgage was created by constructive delivery in the names of other firms also. The documents Annexures R-2/1, R-2/2 and R-2/3 bear testimony to the aforementioned fact, which have been duly signed by the petitioner. Even an agreement of guarantee has been signed by the petitioner, which is Annexure R-2/4 with the written statement.

The aforementioned factual position shows that at the time of motion hearing a patent erroneous statement was made, which the Bench had noticed and has also observed that if the aforementioned statement was found to be incorrect then the petitioner was liable to be burdened with heavy costs.

After hearing learned counsel for the parties we are of the considered view that those who invoke the writ jurisdiction of this Court by making incorrect and false statement, they do so at their own risk and peril. It is well settled that the extra ordinary equitable jurisdiction of this Court cannot be exercised in favour of a person who approaches the Court with soiled hands by making false statements. It is probably for the aforementioned reason that the Bench while passing order on 26.10.2006, has observed that if the contention raised by the counsel for the petitioner was found to be incorrect then the petitioner would be burdened with heavy costs. The conduct of the petitioner has been found to be contumacious and the statement made by him is false and, therefore, the writ petition is liable to be dismissed. In this regard we draw support from a Full Bench judgment of this Court in the case of **Chiranji Lal v. Financial Commissioner, Haryana, 1978 PLR 582**.

In view of the above, we dismiss the writ petition and saddle the petitioner with costs of Rs. 10,000/-.

(M.M. KUMAR)
JUDGE

(VINOD K. SHARMA)
JUDGE

January 18, 2007
Pkapoor